

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Family Court Appeal No. 20 of 2012

District : Aurangabad

Anand s/o. Fakirchand Gaikwad,
Age : 38 years,
Occupation : Education,
R/o. Buddha Nagar,
Jawahar Colony,
Aurangabad.

.. Appellant
(Original respondent)

versus

1. Kavita w/o. Anand Gaikwad,
Age : 29 years,
Occupation : Household,
R/o. C/o. Raghunath Khotkar,
House No.5, Mitmita, Behind
Municipal Corporation School,
Aurangabad.
2. Kirtiratna s/o. Anand Gaikwad,
Age : Minor,
Occupation : Nil.
3. Aparna D/o. Anand Gaikwad,
Age : Minor,
Occupation : Nil.

Both respondent nos.2 & 3 being
Minor under guardian of
Respondent no.1

.. Respondents
(Original petitioners)

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Mr. Rajendra S. Deshmukh, Advocate, for the appellant.

*Mr. Mahesh K. Bhosle, Advocate, holding for
Mr. P.V. Barde, Advocate, for respondent nos.1 to 3.*

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 26TH FEBRUARY 2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1. The respondent had filed petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act 1956, seeking maintenance for herself, son and daughter. The daughter is aged 8 years and the son is aged 11 years. The Family Court partly allowed the said application, granted maintenance of Rs. 2,000/- per month to the wife and Rs. 1,000/- per month, each to son and daughter, totalling Rs. 4,000/- per month. The husband has assailed the said order in the present appeal.

2. Mr. Deshmukh, the learned Counsel for the appellant, strenuously contends that the Court while deciding the said petition, has lost sight of the elementary principle. The wife had earlier filed application under Section 125 of the Code of Criminal Procedure 1973, wherein she was awarded maintenance of Rs. 1,000/- per month and son and daughter each were awarded maintenance of Rs. 500/- per month i.e. totalling Rs. 2,000/- per month. Subsequently, the wife had filed the present petition under Section 18 of the Hindu Adoption & Maintenance Act. Subsequent petition was certainly not maintainable as maintenance was already granted. The respondent - wife had also filed proceedings under the Domestic Violence Act wherein she is also awarded maintenance of Rs. 700/- per month. The learned Counsel relies on the judgment of

Division Bench of Orissa High Court in the case of ***Bansidhar Mohanty Vs. Smt. Jyoshnarani Mohanty***, reported in ***AIR 2002 Orissa 182***. The learned Counsel submits that when earlier proceedings is filed, subsequent proceedings was required to be stayed and the proceedings under Section 18 and 20 of the Hindu Adoption & Maintenance Act could not have been proceeded further. The learned Counsel relies on the judgment of the learned Single Judge of this Court in the case of ***Ravindra Haribhau Karmarkar Vs. Mrs. Shaila Ravindra Karmarkar and another***, reported in ***1992 Cri.L.J. 1845***. The learned Counsel further submits that the amount awarded under Section 125 of the Cr.P.C. is to be adjusted while considering maintenance in other proceedings i.e. proceedings under Section 18 of the Hindu Adoption & Maintenance Act. The learned Counsel relies on the judgment of the Hon'ble Apex Court in the case of ***Sudeep Chaudhary Vs. Radha Chaudhary***, reported in ***AIR 1999 SC 536***. According to the learned Counsel, there is absolutely no iota of evidence on record to substantiate the case of the respondent about earning of the present appellant. The appellant is jobless. Though he has qualification of Ph.D., the appellant could not succeed in getting any job and, as such, is without any source of income. The Family Court has presumed the income of the appellant from agricultural land and has also presumed that the appellant might be taking tuitions. The same is not in consonance with the evidence on record. It is the wife who had deserted the company of the present appellant and this fact is also admitted by the wife in her deposition. According to the learned Counsel, in the light of aforesaid factual matrix, the order passed by the Family Court is not in consonance with the statutory provisions and the evidence on record.

3. The learned Counsel for the respondents supports the judgment and order of the Family Court and submits that the Family Court has considered the income of the present appellant and the maintenance awarded in the proceedings under Section 125 of the Code of Criminal Procedure.

4. We have considered the submissions canvassed by the learned Counsel for respective parties, so also the evidence.

5. The argument that, subsequent proceedings could not have been proceeded further when maintenance under Section 125 of the Cr.P.C. is granted, cannot be considered. Even the Hon'ble Apex Court in the case of **Sudeep Chaudhary**, referred supra, has observed that the maintenance awarded under Section 125 of the Cr.P.C. is adjustable against the amount awarded in matrimonial proceedings under Section 24 of the Hindu Marriage Act 1955.

6. The learned Judge of the Family Court was aware of the factum of maintenance being granted under Section 125 of the Cr.P.C. However, the learned Judge has considered that the said amount is too meagre and after considering the amount of maintenance under Section 125 of the Cr.P.C. granted by the Court, has granted the present amount of maintenance. It shows that the learned Judge has adjusted the maintenance awarded under Section 125 of the Cr.P.C. while awarding maintenance under Sections 18 and 20 of the Hindu Adoption & Maintenance Act.

7. It is not disputed that the appellant is possessing qualification of Ph.D. It is also not disputed that the appellant is doing any job. It was for the appellant to bring on record his income. It cannot be digested that the appellant would be idle more particularly when he is possessing qualification of Ph.D. The amount of maintenance awarded under Section 125 of the Cr.P.C. and the instant petition if clubbed, it would be only Rs. 6,000/- per month which would be maintenance for wife, son and daughter. The son and daughter are school going children. Naturally for their education also, expenses will be required to be incurred. The husband cannot shirk away his responsibility. It has been brought on record, that the appellant possesses agricultural land and the appellant was also taking private tuitions. Be that as it may, the amount of maintenance awarded under Section 125 of the Cr.P.C., even if it is clubbed with the amount of maintenance awarded in the present proceedings, the amount is reasonable considering the present day scenario. It is submitted that the challenge to the order passed under the Domestic Violence Act has failed.

8. Considering the aforesaid conspectus of the matter, no case for interference is made out. The Appeal is accordingly dismissed. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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